

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

-v- 20-cr-335

JACOB DELANEY,

Defendant.

TRANSCRIPT OF PROCEEDINGS
THE HONORABLE THOMAS J. McAVOY
October 13, 2021
445 Broadway, Albany, New York

FOR THE GOVERNMENT:

OFFICE OF THE UNITED STATES ATTORNEY
BY: Emily Powers, AUSA
445 Broadway
Albany, New York 12207

FOR THE DEFENDANT:

SCOTT W. ISEMAN, ESQ.
125 High Rock Avenue, Suite 215-H
Saratoga Springs, New York 12866

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1 COURT CLERK: The date is Wednesday,
2 October 13th, 2021, at 3 p.m., in the matter of the
3 United States of America versus Jacob Delaney, case
4 number 20-cr-335. We're here for a change of plea
5 hearing.

6 Appearances for the record, please.

7 MS. POWERS: Good afternoon, your Honor.
8 Emily Powers for the government.

9 THE COURT: Good afternoon, Ms. Powers.

10 MR. ISEMAN: Good afternoon, your Honor.
11 Scott Iseman for Jacob Delaney, who's in court at my
12 left. Good afternoon, your Honor.

13 THE COURT: Good afternoon, Mr. Iseman.

14 Good afternoon, Mr. Delaney.

15 THE DEFENDANT: Good afternoon, your Honor.

16 THE COURT: All right. As I understand it,
17 this afternoon Mr. Delaney wishes to change his plea and
18 enter a plea of guilty to counts one through four of the
19 indictment and admit to the allegations about forfeiture
20 in that document.

21 Is that your understanding, Mr. Iseman?

22 MR. ISEMAN: It is, your Honor.

23 THE COURT: And how about you? Who is
24 appearing for the government? Is that okay with you,
25 Ms. Powers?

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1 MS. POWERS: Yes, your Honor.

2 THE COURT: All right. Swear the defendant.

3 COURT CLERK: Mr. Delaney, please stand and
4 raise your right hand.

5 (Defendant placed under oath.)

6 THE COURT: All right, Mr. Delaney, would you
7 please state your full name for us.

8 THE DEFENDANT: Jacob Edward Delaney.

9 THE COURT: How old are you?

10 THE DEFENDANT: 23 years old.

11 THE COURT: What's your date of birth?

12 THE DEFENDANT: November 22nd, 1997.

13 THE COURT: Are you married?

14 THE DEFENDANT: No.

15 THE COURT: Do you have any children?

16 THE DEFENDANT: No.

17 THE COURT: How far did you go in school?

18 THE DEFENDANT: I finished undergrad.

19 THE COURT: All right. What kind of work have
20 you done over the years?

21 THE DEFENDANT: I've done substitute teaching
22 and -- this past year, so I was working in a store.

23 THE COURT: Okay. And have you had any
24 alcohol or narcotics in the past 48 hours?

25 THE DEFENDANT: No, your Honor.

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1 THE COURT: Are you currently or have you
2 recently been under the care of any physician,
3 psychiatrist, or other medical care provider for any
4 physical or mental health condition?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Can you tell me about that.

7 THE DEFENDANT: I've just been seeing a
8 psychiatrist once in a while.

9 THE COURT: Say that again.

10 THE DEFENDANT: There's a psychiatrist I've
11 been seeing once a month.

12 THE COURT: Has he given you any medications?

13 THE DEFENDANT: Yes.

14 THE COURT: What's he given you?

15 THE DEFENDANT: Lexapro and Adderall.

16 THE COURT: All right. Is any of that
17 affecting your ability to understand the charges and the
18 consequences?

19 THE DEFENDANT: No, your Honor.

20 THE COURT: Okay. So have you discussed the
21 matter with your attorney, Mr. Iseman?

22 THE DEFENDANT: Yes.

23 THE COURT: Did he explain the charge to you?
24 The charges?

25 THE DEFENDANT: Yes, your Honor.

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1 THE COURT: Do you understand them?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: All right. In a few minutes, I'm
4 going to be asking you some additional questions in
5 order to learn if you're pleading guilty freely and
6 voluntarily with an understanding of the charges and the
7 consequences.

8 I'm going to be asking you if anybody has made
9 any promises of leniency to you to induce you to plead
10 guilty or threaten you with the use of force to induce
11 you to plead guilty.

12 I will be asking you something about what you
13 did in this case so the Court can establish that there's
14 a factual basis for accepting and entering your plea,
15 and I'm going to ask you to reaffirm the information you
16 just gave me about your personal history and background,
17 and I want to advise you if your answers are not
18 truthful, they may later be used against you in a
19 prosecution for perjury or making a false statement.

20 Do you understand that?

21 THE DEFENDANT: Yes.

22 THE COURT: Before I ask you those additional
23 questions and before the clerk takes your plea, I have
24 to advise you of certain rights that you have in
25 connection with this matter.

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1 First of all, you have the right to persist in
2 your original plea as to all counts in the indictment.

3 You have the right to a speedy and public
4 trial by an impartial jury of 12 persons or to a trial
5 by the Court alone if you were to waive or give up your
6 right to a jury trial. At such a trial, you would have
7 the right to the assistance of an attorney. You would
8 have the right to confront, that is, to see and hear any
9 witnesses sworn against you, and to cross-examine them.

10 You would have the right to remain silent or
11 to testify in your own behalf, but you couldn't be
12 compelled to incriminate yourself or to testify at all,
13 and your silence couldn't be held against you in any
14 way, nor could any inferences of guilt be drawn against
15 you if you decided not to testify.

16 You would have the right to use subpoena or
17 other processes of the Court to compel witnesses to
18 attend the trial and testify and to obtain any
19 documentary or other evidence you might wish to offer in
20 your own defense.

21 Now, if the Court accepts your plea of guilty
22 here this afternoon, you're going to waive, or give up,
23 all those rights, there won't be a trial of any kind,
24 and the Court will have the same power to sentence you
25 as if you had been found guilty after a trial on the

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1 counts to which you are pleading.

2 You told me a few moments ago that you talked
3 over the charges with Mr. Iseman and that he explained
4 them to you, and you understood them. Was that true?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Did you also talk to him about the
7 potential sentences of the consequences of pleading
8 guilty?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Do you understand those?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Did you speak with him about your
13 chances of winning or losing if you went to trial, trial
14 strategy and defenses?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Okay. Lastly, I want to advise
17 you that your plea of guilty constitutes a waiver or
18 giving up your right against self-incrimination, and I
19 want to warn you not to plead guilty unless you are in
20 fact guilty of the charges made against you in count one
21 through four of the indictment.

22 Do you still wish to plead guilty?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: All right. John.

25 COURT CLERK: Please stand. In the indictment

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1 that was filed on October 29th, 2021, in the matter of
2 the United States of America versus Jacob Delaney, case
3 number 20-cr-335, the grand jury charges in count one,
4 receipt of child pornography.

5 In or about September 2018 through on or about
6 December 11th, 2019, in Ulster County, in the Northern
7 District of New York and elsewhere, the defendant, Jacob
8 Delaney, did knowingly receive child pornography using a
9 means and facility of interstate and foreign commerce,
10 shipped and transported in and affecting such commerce
11 by any means, including by computer, in that the
12 defendant did receive graphic image and video files
13 depicting one or more minors engaged in sexually
14 explicit conduct by use of the internet, in violation of
15 Title 18, United States Code, Sections 2252A(a)(2)(A)
16 and (b)(1).

17 How do you plead? Guilty or not guilty?

18 THE DEFENDANT: Guilty.

19 COURT CLERK: As to counts two through four,
20 possession of child pornography, on or about
21 December 12th, 2019, in Ulster County, in the Northern
22 District of New York, the defendant, Jacob Delaney, did
23 knowingly possess material that contained one or more
24 images and videos of child pornography that had been
25 shipped and transported using a means and facility of

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1 interstate and foreign commerce and in and affecting
2 such commerce by any means, including by computer, and
3 that was produced using materials that had been
4 transported in and affecting such commerce by any means,
5 including by computer, that is, the electronic media
6 described below, which contained numerous graphic images
7 and videos of minors engaged in sexually explicit
8 conduct, in violation of Title 18, United States Code,
9 Sections 2252A(a) (5) (B) .

10 Count two, a Dell laptop computer bearing
11 serial number FN47R32, manufactured in China, and
12 containing a Samsung SSD, bearing serial number
13 S1D2NYAG403787.

14 Count three, KESU 120 gigabyte hard drive,
15 made in China; and count four, Sandisk Cruzer flash
16 drive bearing serial number BL11020HYB, made in China.

17 These violations involved images and videos of
18 child pornography involving prepubescent minors and
19 minors who had not attained 12 years of age, in
20 violation of Title 18, United States Code, Section
21 2252A(b) (2) .

22 How do you plead? Guilty or not guilty?

23 THE DEFENDANT: Guilty.

24 COURT CLERK: And as to the forfeiture
25 allegation, the allegations contained in counts one

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1 through four of this indictment are hereby realleged and
2 incorporated by reference herein for the purposes of
3 alleging forfeiture pursuant to the provisions of Title 18,
4 United States Code, Section 2253, pursuant to the Title
5 18, United States Code, Section 2253, upon conviction of
6 any of the charges alleged in counts one through four of
7 this indictment, the defendant, Jacob Delaney, shall
8 forfeit to the United States of America any visual
9 depictions described in Title 18, United States Code,
10 Section 2251, 2251(a), 2252, 2252(a), 2252(b), and 2260,
11 and any book, magazine, periodical, films, videotape,
12 and other matter which contains any such visual
13 depiction which was produced, transported, mailed,
14 shipped and received, in violation of Chapter 110 of the
15 Title 18 of the United States Code, any property, real
16 and personal, constituting and traceable to gross
17 profits and other proceeds obtained from such offense,
18 and any profit, real and personal, used and intended to
19 be used to commit and to promote the commission of such
20 offense and any property traceable to such property.
21 The property to be forfeited includes but is not limited
22 to the following:

23 A Dell laptop computer, bearing serial number
24 FN47R32, a Samsung SSD, bearing serial number
25 S1D2NYAG403787, a Kesu 120 gigabyte hard drive, and a

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1 Sandisk Cruzer flash drive, bearing serial number
2 BL11020HYB, do you admit to the forfeiture allegation?

3 THE DEFENDANT: Yes.

4 COURT CLERK: Thank you.

5 THE COURT: All right. You may be seated now.
6 A few moments ago I asked you your name, your age, your
7 date of birth, about your marital status, your family,
8 your educational background, what you did for a living,
9 and were you under the care and treatment of any medical
10 care provider and taking any medication, if it affected
11 your ability to understand the charge and the
12 consequences, did you have counsel, and did he explain
13 the charges to you.

14 If I asked you all those same questions again,
15 would you give me the same answers?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Has Mr. Iseman advised you of your
18 rights in this case?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Is there anything you'd like to
21 ask me about your rights today?

22 THE DEFENDANT: No, your Honor.

23 THE COURT: Are you satisfied with what
24 Mr. Iseman has done for you so far?

25 THE DEFENDANT: Yes, your Honor.

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1 THE COURT: Has Mr. Iseman or Ms. Powers or
2 any public official or anyone made any promises to you
3 that you would be treated leniently in exchange for your
4 plea of guilty?

5 THE DEFENDANT: No, your Honor.

6 THE COURT: Has anyone threatened you with the
7 use of force to induce to you plead guilty?

8 THE DEFENDANT: No, your Honor.

9 THE COURT: Are you pleading guilty freely and
10 voluntarily?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Are you currently on probation
13 from any other court or parole from any institution?

14 THE DEFENDANT: No, your Honor.

15 THE COURT: Okay.

16 Ms. Powers, does the government have
17 sufficient evidence to prove the Mr. Delaney guilty
18 beyond a reasonable doubt of the charges and counts one
19 through four?

20 MS. POWERS: Yes, your Honor. The government
21 would have to prove a number of things with respect to
22 each count.

23 With respect to count one, receipt of child
24 pornography, the government would have to show that the
25 defendant knowingly received a visual depiction.

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1 Second, the government would have to show that the
2 visual depiction was received or transported using a
3 means or facility of interstate or foreign commerce or
4 in and affecting such commerce by any means, including
5 computer.

6 Third, the government would have to show that
7 the visual depiction was child pornography and, last,
8 that the defendant knew of the sexually explicit nature
9 of the visual depiction and that the visual depiction
10 was of an actual minor engaged in sexually explicit
11 conduct.

12 As to counts two, three and four, possession
13 of child pornography, the government would have to
14 prove, first, that the defendant knowing possessed
15 material that contains one or more visual depictions
16 that are child pornography. Two, that the visual
17 depictions have been mailed or shipped or transported
18 using a means or facility of interstate commerce or
19 foreign commerce or in and affecting such commerce by
20 any means, including by computer, or produced using
21 materials that had been shipped or transported in and
22 affecting such commerce by any means, including by
23 computer.

24 Third, that the defendant knew of the sexually
25 explicit nature of the visual depictions and the visual

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1 depictions were of an actual minor or minors engaged in
2 sexually explicit conduct.

3 And, finally, that the visual depictions of
4 child pornography possessed by defendant involved
5 prepubescent minors and minors who had not attained
6 12 years of age. These elements are set forth at --
7 starting on paragraph 4 at page 5 of the plea agreement.

8 The government would prove those elements that
9 I just read through a combination of different kinds of
10 evidence and would show them beyond a reasonable doubt.
11 Specifically, that between about September 2018 and
12 December 12th, 2019, the defendant resided in New Paltz,
13 New York, which is located in the Northern District of
14 New York.

15 The government would also show through the
16 evidence that on December 12th, 2019, the defendant
17 cumulatively possessed over 10,000 image files and
18 between about 150 and 200 video files of child
19 pornography on numerous electronic devices as listed in
20 counts two, three and four of the indictment.

21 None of these devices were manufactured in the
22 state of New York, and all of them were seized from the
23 defendant's New Paltz residence by law enforcement
24 pursuant to a federal search warrant signed on
25 December 10th, 2019.

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1 Pardon me, my phone was buzzing; I want to
2 turn it off so it's not bothering anyone. I apologize.

3 They were all seized pursuant to a federal
4 search warrant signed by the Honorable Daniel J.
5 Stewart, United States Magistrate Judge; that warrant
6 was signed December 10th, 2019.

7 As to count one of the indictment, from on or
8 about September of 2018 through on or about
9 December 11th, 2019, the evidence would show that the
10 defendant used a Dell laptop computer, bearing serial
11 number FN47R32, which contained a Samsung SSD, bearing
12 serial number S1D2NYA403787, to search for and knowing
13 receive images and videos of child pornography from the
14 internet, including a video file named ten-year-old
15 Jonas's sexy show MP4, which depicted lascivious
16 depictions of the genitals of a boy approximately ten
17 years old, who is depicted showing his naked penis to
18 the camera and then playing with his penis. This file
19 was later recovered from the defendant's computer.

20 As to counts two, three and four of the
21 indictment, the evidence would show that the defendant
22 possessed numerous graphic image and video files
23 containing child pornography on each of the three
24 devices specified. This is a -- what I'll describe as a
25 sampling of the child pornography files possessed by the

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1 defendant on December 12th, 2019.

2 On a Dell laptop, bearing serial number
3 FN47R3, manufactured in China and containing Samsung
4 SSD, which has already been described and is set forth
5 in the forfeiture allegation, the defendant possessed
6 numerous files, including an image file which depicts an
7 image of a minor male lying naked on a bed with his legs
8 spread apart with a black object inserted into his anus,
9 and an image file which depicts an image of three
10 prepubescent children sitting on a couch, all three are
11 nude; a male is sitting in the middle of two females,
12 the females are touching the male's penis with their
13 fingers while the males touching each girl's vaginal
14 area with his hand.

15 There are specific image file names associated
16 with those two that are set forth at page 8 of the plea
17 agreement.

18 The evidence would also show that on a -- that
19 KESU 120 gigabyte hard drive, manufactured in China, the
20 defendant possessed numerous files, including a video
21 file which is a video depicting a young male inserting a
22 wooden object into his anus, and another image file
23 which contains an image of a prepubescent male anally
24 penetrating another prepubescent male.

25 The evidence would show also that on a Sandisk

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1 Cruzer flash drive that's described in the forfeiture
2 allegation the defendant possessed approximately 68
3 video files depicting minors engaged in sexually
4 explicit conduct.

5 The evidence would also show that the Dell
6 laptop that's described in the forfeiture allegation and
7 previously described above, as well as the KESU 120
8 gigabyte hard drive and Sandisk Cruzer flash drive
9 already described were used to facilitate the offenses
10 of conviction, and that the defendant used those devices
11 to receive and possess child pornography as charged in
12 the indictment, and the defendant is the owner of those
13 described electronic devices.

14 THE COURT: All right, Mr. Delaney, did you
15 hear and understand what Ms. Powers said about what you
16 did in this case?

17 THE DEFENDANT: Yes, yes, your Honor.

18 THE COURT: Is that what you did?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Is that your understanding,
21 Mr. Iseman?

22 MR. ISEMAN: Yes, it is, your Honor.

23 THE COURT: All right. Ms. Powers, would you
24 please advise Mr. Delaney and the Court what the maximum
25 penalties would be for the counts involved.

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1 MS. POWERS: Yes, your Honor. The potential
2 maximum penalties are set forth at paragraph 3 of the
3 plea agreement, which starts at page 4 -- for count one,
4 the potential maximum -- I'm sorry. The maximum term of
5 imprisonment is 20 years. For counts two, three and
6 four, there's a maximum term of imprisonment of 20 years
7 as well. For count one, there's also a mandatory
8 minimum term of imprisonment of five years.

9 There's a maximum fine of \$250,000 per count.
10 There's also a number of other things that I'll now
11 describe. First of all, in addition to imposing any
12 other penalty, the sentencing court must require the
13 defendant to serve a term of supervised release of
14 between five years and life to begin after imprisonment.

15 Violation of the conditions of supervised
16 release during that time period may result in additional
17 term of imprisonment of up to three years.

18 The defendant must require [sic] as a sex
19 offender under paragraph 3-E. There are additional
20 adverse consequences associated with pleading guilty
21 which are set forth in more detail at paragraph F of the
22 plea agreement. These include potential loss of the
23 right to bear arms or vote or hold certain professional
24 licenses.

25 There are also financial consequences and

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1 forfeiture consequences associated with the conviction
2 for the offenses charged. First of all, there's a
3 special assessment of \$100 per count, for a total of
4 \$400. There's also an additional special assessment of
5 \$5,000 because this is a -- nature of the offense,
6 that's pursuant to Title 18, United States Code,
7 Section 3014(a).

8 There's also restitution required. That is
9 detailed more specifically at paragraph 1(e), set forth
10 at page 2.

11 With respect to counts two and four, there's a
12 restitution to be determined by the Court for the full
13 amount of the victims' losses that were incurred or
14 reasonably projected to be incurred in an amount that
15 reflects the defendant's relative role in the causal
16 process that underlies the victims' losses and no less
17 than \$3,000. There's more about what that means
18 spanning page 2 and 3 of the plea agreement.

19 There's also a child pornography assessment of
20 \$17,000 per count for counts two through four, that's
21 set forth at one -- at page 3. And, last, there are
22 forfeiture consequences. Pursuant to this plea
23 agreement, the defendant is going to consent to an order
24 of forfeiture of the property described in the
25 forfeiture allegations. Specifically, the Dell laptop

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1 described, a Samsung SSD, the KESU 120 gigabyte hard
2 drive and the Sandisk Cruzer flash drive; those specific
3 identifying numbers are set forth at pages 4.

4 The defendant also will consent to forfeiture
5 of individual depiction described in chapter 110 of
6 Title 18, United States Code, and any property, real and
7 property, traceable to gross profits and other proceeds
8 obtained from the offense, and any other property used
9 to commit and promote the commission of the offense and
10 property traceable to such property.

11 THE COURT: All right.

12 MS. POWERS: I think I got everything.

13 THE COURT: Mr. Delaney, in addition to what
14 Ms. Powers just iterated about your sentence, Court must
15 also advise you that under and pursuant to certain
16 sentencing guidelines adopted by the United States that
17 used to be mandatory but are no longer mandatory but
18 still must be considered by the Court in the sentencing
19 process, that my discretion in sentencing you is thereby
20 affected, and the Court must enforce the law as it
21 stands today.

22 But sometimes the Court can sentence you above
23 the guidelines or below the guidelines or even outside
24 of the guidelines, depending upon the facts the
25 circumstances and the law presented to the Court at or

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1 about the time of sentencing.

2 So do you understand what I just said about
3 the sentencing guidelines?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Okay. Ms. Powers, have you done a
6 preliminary guideline calculation?

7 MS. POWERS: Yes, the government has,
8 your Honor. Would you like me to go through it now?

9 THE COURT: Please.

10 MS. POWERS: There are some sentencing
11 stipulations in the plea agreement, which I'll walk
12 through as well. The first I'll just say that the
13 government estimates first that the defendant falls into
14 criminal history category of I, that the base offense
15 level here pursuant to sentencing guideline Section
16 2G2.2(a)(2) combined with 2G2.2(b)(1) is 20. There are
17 several enhancements that the parties agree to set forth
18 at paragraph 6, at page 9.

19 Those include, first, a two-level increase
20 pursuant to 2G2.2(b)(2) because the offenses involved a
21 prepubescent minor or minor who had not attained the age
22 of 12, that there's a four-level enhancement pursuant to
23 because material -- the offense involved material that
24 portrays sadistic or masochistic conduct or other
25 depictions of violence. There's also under 2G2.2(b)(6)

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1 a two-level increase because the offenses involved the
2 use of a computer or an interactive computer service.
3 And then the last enhancement is a five-level increase
4 pursuant to 2G2.2(b)(7) because the offenses involved
5 600 or more images.

6 So that leads to a guideline range before
7 acceptance of responsibility of between 135 and
8 168 months imprisonment. However, if the defendant --
9 defendant's pleading guilty today and if he remain
10 cooperative through the time of sentencing, the
11 government would move for a three-level downward
12 departure, which would lead to an estimated guideline
13 range of between 97 and 121 months in prison.

14 THE COURT: All right. Mr. Delaney, did you
15 sign your plea agreement in this case?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Did you talk it over with
18 Mr. Iseman before you signed it?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Did he explain it to you?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Did you understand it when you
23 signed it?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Did you sign it freely and

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1 voluntarily?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: All right. In your plea
4 agreement, on page 10, paragraph 7 you've indicated to
5 the Court that after consultation with counsel both you
6 and he feel it would be in your best interest to waive,
7 or give up, certain appeal rights, and those are as
8 follows:

9 The right to appeal or collaterally attack
10 your conviction resulting from your guilty plea today,
11 the right to appeal or collaterally attack any claim
12 that the statute to which you're pleading guilty are
13 unconstitutional, the right to appeal or collaterally
14 attack any claim that your admitted conduct does not
15 fall within the scope of the statutes, the right to
16 appeal or collaterally attack any sentence to a term of
17 imprisonment of 168 months or less, the right to appeal
18 or collaterally attack any sentence to a fine within the
19 maximum permitted by law, or any sentence to a term of
20 supervised release within the maximum permitted by law,
21 or any order of forfeiture or restitution imposed by the
22 Court that is consistent with governing law and is not
23 contrary to the terms of your plea agreement.

24 Did you understand what you were doing when
25 you agreed to give up those appeal rights?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: And did you do that voluntarily?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Mr. Iseman, did you sign on behalf
5 of Mr. Delaney knowingly and voluntarily?

6 MR. ISEMAN: I did, your Honor.

7 THE COURT: And, Ms. Powers, did you sign on
8 behalf of the government?

9 MS. POWERS: Yes, your Honor.

10 THE COURT: All right. Mr. Delaney, Court
11 also has to advise you that it's not bound by any
12 sentencing recommendation contained in the plea
13 agreement. You will have no right to withdraw your plea
14 of guilty if the Court decides not to accept any
15 non-binding recommendation.

16 The Court will of course defer or put off its
17 decision to reject or accept any recommendation until I
18 have seen the presentence investigation report and any
19 other materials that are sent to me that bear on
20 sentencing in that connection.

21 So do you understand what I just said about
22 the Court's ability to reject any non-binding
23 recommendation contained in the plea agreement?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: All right. Now that you have

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1 heard about the potential statutory sentence and the
2 guidelines, do you still wish to plead guilty?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: And are you pleading guilty
5 because you are guilty?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Mr. Iseman, would you state your
8 background and experience in handling matters of this
9 kind.

10 MR. ISEMAN: Yes, your Honor. I have been
11 admitted to the New York State bar for ten years.
12 Before that, before I entered private practice, I was a
13 prosecutor in the United States Marine Corps where I
14 handled a number of child pornography offenses. I also
15 a special assistant United States Attorney in Eastern
16 District of North Carolina, where I prosecuted these
17 offenses in federal court as well.

18 Since then, I've returned home, I've been in
19 the Northern District of New York, admitted to this bar
20 since 2014, and many of these cases before the court.

21 THE COURT: All right. Approximately how much
22 time have you spent so far defending Mr. Delaney in this
23 case?

24 MR. ISEMAN: I have excess of 50 hours, your
25 Honor.

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1 THE COURT: Have you had what you believe to
2 believe adequate discovery of the government's case?

3 MR. ISEMAN: Yes.

4 THE COURT: Have you advised Mr. Delaney of
5 his rights, the nature of the charges and the
6 consequences of pleading guilty?

7 MR. ISEMAN: Yes.

8 THE COURT: Except what's in the plea
9 agreement, have you made any promises or threats to
10 induce him to plead guilty?

11 MR. ISEMAN: No, your Honor.

12 THE COURT: Are you satisfied that he's
13 pleading guilty freely and voluntarily with an
14 understanding of the charges and the consequences?

15 MR. ISEMAN: Yes, your Honor.

16 THE COURT: Can you state any reason why he
17 should not plead guilty?

18 MR. ISEMAN: No, your Honor.

19 THE COURT: All right. Based on the
20 foregoing, the Court will find that Mr. Delaney pled
21 guilty freely and voluntarily, that he is and was
22 competent to enter such a plea, that he understands the
23 charges against him and the consequences of pleading
24 guilty, that there is and was a basis in fact for the
25 Court taking and entering your plea of guilty.

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1 Court will direct the probation department to
2 prepare and submit a presentence report. Court will set
3 sentencing for February 15th, 2022, at 11:30 a.m. in
4 Albany, New York, and the defendant will be remanded
5 until sentencing is arrived at.

6 Is there anything further from the government?

7 MS. POWERS: I do just want to note this is a
8 somewhat unusual plea agreement in the sense that it
9 arises under Federal Rule of Criminal Procedure 11b2,
10 and there are certain appeal rights that are preserved
11 by the defendant, they're set forth at page 11.

12 THE COURT: Okay. How about from you,
13 Mr. Iseman?

14 MR. ISEMAN: Well, your Honor, I'd like to be
15 heard on the issue of remand before we get there.

16 THE COURT: I'm sorry?

17 MR. ISEMAN: I'd like to be heard on the issue
18 of his release pending sentencing.

19 THE COURT: Let me see you at sidebar for a
20 minutes.

21 (Discussion held at sidebar.)

22 THE COURT: Earlier today the probation
23 department came up and talked about me. Mr. Delaney
24 said that he's threatened suicide on more than one
25 occasion, and they're worried about him walking around

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1 waiting to be sentenced he might hurt himself, and
2 that's basically the reason for remand.

3 The statute tells me I have to remand people
4 but I don't usually remand them. Usually I wait until
5 sentencing. But in this case, I'm trying to save his
6 life, so that's why I ordered remand.

7 MR. ISEMAN: I understand, Judge, and I know
8 what the Court is trying to do. Respectfully, I think
9 that he can get the best help for himself is where he's
10 home with his parents, and he's seeing a counselor, he's
11 under medication. This suicidal ideations is not new,
12 this happened months ago, and he didn't do anything to
13 act upon it. He just expressed it to a counselor.

14 THE COURT: If he did, then he wouldn't be
15 here to take the plea.

16 MR. ISEMAN: Not necessarily, there's --
17 there's all sorts of people can do it successfully or
18 partial attempt.

19 THE COURT: That's true.

20 MR. ISEMAN: Half measures here. There's no
21 action on his part. He's expressed something to a
22 counselor. That's it. And, respectfully, Rensselaer
23 County Jail or Albany County Jail is not a place for
24 someone to stay safe from themselves rather than the
25 home where he can get mental health care. And up until

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1 about five minutes before today, the government's
2 position was that he -- that they were not going to be
3 seeking remand. I understand that you have -- the
4 government hasn't stated.

5 THE COURT: The government didn't talk to me
6 about that.

7 MR. ISEMAN: I understand that, your Honor.
8 But, up until they --

9 THE COURT: Yes, that's what you --

10 MR. ISEMAN: -- up until --

11 THE COURT: That's what you've been telling
12 your client.

13 MR. ISEMAN: That's what I've been telling
14 him, but I told him what the standard is and that
15 there's a possibility of it. Okay? But, respectfully,
16 Judge, he -- his -- he articulated a concern about the
17 way he was feeling under the circumstances, which is --
18 he hasn't acted on. He's getting mental health, he's
19 home, he's abided by these conditions and lived with
20 this for almost two years right now.

21 THE COURT: Is he taking insulin every day?

22 MR. ISMAN: I'm sorry?

23 THE COURT: Does he take insulin?

24 MR. ISEMAN: Not insulin, he has Lexapro and
25 Adderall.

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1 THE COURT: Okay. That's keeping him
2 injected.

3 MR. ISEMAN: It helps his -- manages his
4 anxiety about what he's facing. Additionally, he has
5 something to fight for. This is a conditional plea. I
6 know that the Court -- obviously wouldn't be here if the
7 Court agreed with my motion. But I think the Court
8 acknowledges that we have some merit -- not meritorious,
9 but we have something to talk about on appeal,
10 otherwise, we wouldn't be in a conditional plea
11 situation.

12 So this young man isn't a foregone conclusion
13 that's just going to flush his life down the toilet if
14 he goes home. He has no prior criminal history, he
15 voluntarily appeared here today with his family. His
16 family are right in back, Tom and Tina. They are going
17 to take good care of him. The best place for him is
18 home with his -- where he can get mental health care,
19 not in Albany County Jail.

20 THE COURT: Well, I think you're right about
21 Albany County Jail. It's not the best place in the
22 world for healthcare but, once again, I'm just afraid
23 he's going to do something, and if I let him go until
24 sentencing and he does something, it's on my head. I
25 really don't want to take that kind of a risk.

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1 MR. ISEMAN: Judge, respectfully, people do
2 this to themselves in jail all the time. It's no
3 guarantee. I mean, locking a guy up in jail is no
4 guarantee they are not going to try hurt themselves.

5 THE COURT: No, it's no guarantee. People do
6 it.

7 MR. ISEMAN: The best place for him is where
8 he can get professional medical care with a trusted
9 mental health provider and the support of his family at
10 home. That's the best place for him.

11 THE COURT: What do you say about that?

12 MS. POWERS: I mean, I think I share the
13 Court's concerns. You know, my understanding had been
14 from Rick Belliss, who was up until -- he heard from
15 probation earlier, he had been on the fence, and it's
16 hard for me covering that now to say whether there's a --
17 where there's a concern someone will take their life,
18 especially with a plea behind them, that we shouldn't
19 exercise care to make sure we do everything that can be
20 done to preserve their life.

21 So, all of that is to say the concerns about
22 non-appearance and danger to him are strong for the
23 government.

24 THE COURT: Well, I don't have any authority
25 to say where he's going to be held between now and

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1 sentencing if I remand him. They could put him anyplace
2 they want to put him. Probably would be a local jail.

3 MR. ISEMAN: The contract is for Rensselaer
4 County or Albany. I think it's just for Albany right
5 now. But I'm just saying anecdotally I don't know for
6 sure. But neither place is going to receive, you know,
7 good mental health care which is --

8 THE COURT: He won't.

9 MR. ISEMAN: -- which is what he needs right
10 now.

11 THE COURT: I can recommend of course at
12 sentencing that he be placed in a institution where he
13 can get mental health care, and there are several around
14 the country.

15 MR. ISEMAN: Yes, your Honor.

16 THE COURT: Not all of them do that. Well,
17 I'm -- I think I agree with you. I will let him go.

18 MR. ISEMAN: Thank you, Judge.

19 THE COURT: I'm telling you, it's a chance I'm
20 taking I don't want to take.

21 MR. ISEMAN: It's on me, too. It's on me,
22 too. Believe me, that is what -- this is what -- I
23 wouldn't be doing it otherwise and --

24 THE COURT: No, I understand.

25 MR. ISEMAN: He's going to be in a place with

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1 his family, he's lived with this a long time. I think
2 the risk is minimal right now. He's talking to a
3 therapist.

4 THE COURT: I hope so. Okay. Well.

5 MR. ISEMAN: Thank you, Judge.

6 THE COURT: On the record, the Court will
7 withdraw its order to remand the defendant, order that
8 he show up for sentencing as stated by the Court and be --
9 stay at home between now and then, under the care and
10 treatment of his parents, as he's done in the past. My
11 understanding is he's done pretty well up until this
12 point on supervised release. So --

13 MS. POWERS: Would it be unreasonable that he
14 increase his treatment -- increase the frequency of his
15 treatment?

16 THE COURT: Sure. If any more treatment he
17 can get, is a big help. Is there any possibility of
18 that?

19 MR. ISEMAN: Sure. We can do that. We can
20 coordinate with it pretrial services or probation, your
21 Honor.

22 THE COURT: All right. Why don't you try to
23 figure out what you can do and let me know and -- that
24 will it be a -- accompanying him going home now. Okay.
25 Thanks.

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1 MR. ISEMAN: Thank you, Judge.

2 THE COURT: Court stands adjourned.

3 (Held in open court)

4 THE COURT: Court stands adjourned in this
5 matter. Do you have terms and conditions of release?

6 (Pause in proceeding.)

7 THE COURT: After speaking with the probation
8 department, the Court orders that the defendant be
9 released on the same terms and conditions under which
10 he's currently serving and with the hopes that he will
11 do as well, he's as he's done so far on release, and the
12 Court believes that he will or I wouldn't release him.

13 Court stands adjourned.

14 MR. ISEMAN: Thank you, Judge.

15 (Proceeding concluded.)

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C E R T I F I C A T I O N

I, Lisa L. Tennyson, RMR, CSR, CRR, Federal Official Realtime Court Reporter, in and for the United States District Court for the Northern District of New York, do hereby certify that pursuant to Section 753, Title 28, United States Code, that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

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